

STATE OF SOUTH DAKOTA  
OFFICE OF PROCUREMENT MANAGEMENT  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA 57501-3182

**Emergency TANF Child Care Slots**

PROPOSALS ARE DUE NO LATER THAN 06/03/2022 5:00 pm CST

RFP 2783

**BUYER:**  
Division of Economic Assistance, Child  
Care Services

**POC:** Dawson Lewis  
[Dawson.Lewis@state.sd.us](mailto:Dawson.Lewis@state.sd.us)

**READ CAREFULLY**

FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_  
(Digital Signature allowed)

ADDRESS: \_\_\_\_\_ TYPE OR PRINT NAME: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

ZIP (9 DIGIT): \_\_\_\_\_ FAX NO: \_\_\_\_\_

FEDERAL TAX ID#: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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**PRIMARY CONTACT INFORMATION**

CONTACT NAME: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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## 1.0 GENERAL INFORMATION

### 1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The South Dakota Department of Social Services (DSS) is seeking a Licensed Day Care Center to maintain available day care slots to be used by families participating in the Temporary Assistance for Needy Families (TANF) Work program in coordination with the Department of Labor. The provider would ensure slots are available temporarily until long-term childcare arrangements are made. The provider would ensure the availability of eight (8) slots for children which may include infants, toddlers or children over age 3. The provider must be located in Sioux Falls, South Dakota.

### 1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The Department of Social Services (DSS) Office of Child Care Services is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, The Department of Social Services Office of Child Care Services. The reference number for the transaction is **RFP 2783**. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, amendments, etc.

### 1.3 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	<u>05/02/2022</u>
Deadline for Submission of Written Inquiries	<u>05/13/2022</u>
Responses to Offeror Questions	<u>05/20/2022</u>
Proposal Submission	<u>06/03/2022 5:00pm CDT</u>
Anticipated Award Decision/Contract Negotiation	<u>07/01/2022</u>

### 1.4 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received by **The Department of Social Services Office of Child Care Services** by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

An original, copy of the proposal, all attachments, and the cost proposal(s) must be submitted.

All proposals may be signed in ink or digitally by an officer of the offeror legally authorized to bind the offeror to the proposal and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected.

The sealed envelope must be marked with the appropriate RFP Number and Title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container. Proposals must be addressed and labeled as follows:

Request For Proposal 2783 Proposal Due 06/03/2022 5:00pm  
South Dakota Department of Social Services  
Attention: Dawson Lewis, Operations Office  
700 Governors Drive  
Pierre SD 57501-2291

No punctuation is used in the address. The above address as displayed should be the only information in the address field.

**1.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

**1.6 NON-DISCRIMINATION STATEMENT**

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

**1.7 RESTRICTION OF BOYCOTT OF ISRAEL**

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

**1.8 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered unless previously approved.

## 1.9 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after 05/13/2022. Email inquiries must be sent to [Dawson.Lewis@state.sd.us](mailto:Dawson.Lewis@state.sd.us) with the following wording, exactly as written, in the subject line: **RFP 2783 Questions**.

The Department of Social Services (DSS) will respond to offerors' inquiries by posting offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than 05/20/2022. For expediency, DSS may combine similar questions. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

## 1.10 PROPRIETARY INFORMATION

The proposal of the successful offeror(s) becomes public information.

Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. ***Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected.*** The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

Offerors may submit a redacted copy of their proposal when they respond though this is optional.

## 1.11 LENGTH OF CONTRACT

The contract is expected to be effective approximately July 01, 2022 and end May 31, 2023, with the possibility of an extension for up to two additional years.

## 1.12 GOVERNING LAW

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

## 1.13 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted

until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

## **2.0 STANDARD AGREEMENT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include, at minimum, the State's standard terms and conditions as seen in Attachment A. As part of the negotiation process, the contract terms listed in Attachment A may be altered or deleted.

***The offeror should indicate in their response any issues they have with any specific contract terms.*** If the offeror does not indicate any contract term issues, then the State will assume the terms are acceptable.

## **3.0 SCOPE OF WORK**

- 3.1 The provider will provide childcare on an emergency basis at a specified State licensed daycare center location in Sioux Falls South Dakota for children of families participating in the TANF Work program.
- 3.2 The provider will maintain eight slots for children including infants, toddlers, and children over age 3, to be available upon request from the Department of Labor.
- 3.3 The provider will maintain a daily attendance log for each child placed in a contracted slot.
- 3.4 The provider will report weekly usage of to the Department of Labor Employment Specialist.
- 3.5 Department of Labor staff will notify the provider of the need to use a slot for a specified child and will assist with registration. The provider will ensure slots are only used for children that have been authorized by the Department of Labor.
- 3.6 The provider will maintain communication with Department of Labor staff and report any excessive absences, irregular care, or if the child is no longer attending the program.
- 3.7 The provider will work cooperatively with the Department of Labor regarding placement of children in childcare, designating slots, and in transitioning children into permanent childcare arrangements.

## **4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS**

- 4.1 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 4.2 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the point of contact of the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.

- 4.3 The offeror must submit information that demonstrates their availability to provide child care in Sioux Falls South Dakota and maintain the availability of at least 8 slots for the duration of the contract period. Ideally the program will be able to provide care at a location within walking distance (less than a 15-minute walk) of either the Department of Labor office at 811 E 10<sup>th</sup> Street or within walking distance of a bus stop.
- 4.4 The offeror must provide verification that they have a current Day Care License with the state of South Dakota.
- 4.5 If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated if it is not received on time or is not signed by the proposer.

## **5.0 PROPOSAL RESPONSE FORMAT**

5.1 An original copy shall be submitted.

- 5.1.1 In addition, the offeror must submit one (1) copy of their entire proposal, including all attachments and cost proposal(s) as a hard copy.

A total of two paper copies shall be submitted.

- 5.1.2 An electronic copy in the form a PDF shall be submitted on a thumb drive with your paper copies.

- 5.1.3 The proposal should be page numbered

- 5.1.4 **RFP Form.** The State's Request for Proposal form completed and signed.

- 5.1.5 **Executive Summary.** The one-page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary.

- 5.1.6 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:

- 5.1.6.1 A specific point-by-point response, in the order listed to each requirement in the RFP as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the RFP.

- 5.1.7 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

See section 7.0 for more information related to the cost proposal.

## **6.0 PROPOSAL EVALUATION AND AWARD PROCESS**

6.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria listed in order of importance:

- 6.1.1 Availability to the project locale
- 6.1.2 Familiarity with the project locale
- 6.1.3 Cost proposal
- 6.1.4 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- 6.1.5 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
- 6.1.6 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
- 6.1.7 Ability and proven history in handling special project constraints, and
- 6.1.8 Proposed project management techniques;

6.2 Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.

6.3 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.

6.4 The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.

6.5 **Award:** The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.

- 6.5.1 If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.
- 6.5.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.
- 6.5.3 Only the response of the vendor awarded work becomes public. Responses to work orders for vendors not selected and the evaluation criteria and scoring for

all proposals are not public. Vendors may submit a redacted copy with the full proposal as stated in Section 1.12 Proprietary Information. SDCL 1-27-1.5 and See SDCL 1-27-1.5 and 1-27-1.6.

#### 7.0 **COST PROPOSAL**

The cost proposal should include the weekly cost per slot required to ensure the availability, regardless of usage, of a full-time childcare slot. The cost per slot should be a single set weekly rate per slot to be multiplied by eight. The cost per slot should not vary depending on the age of the child who may use the slot and should be determined knowing that the age of the child that may utilize the slot will vary.



**ATTACHMENT A – Sample Contract**

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF ECONOMIC ASSISTANCE**

**Purchase of Services Agreement  
For Provider Services  
Between**

State of South Dakota  
Department of Social Services  
DIVISION OF ECONOMIC ASSISTANCE  
700 Governors Drive  
Pierre, SD 57501-2291

\_\_\_\_\_  
Referred to as Provider

\_\_\_\_\_  
Referred to as State

The State hereby enters into a contract (the "Agreement" hereinafter) for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. Provider's South Dakota Vendor Number is \_\_\_\_\_.
2. **PERIOD OF PERFORMANCE:**
  - A. This Agreement shall be effective as of July 1, 2022 and shall end on June 30, 2022, unless sooner terminated pursuant to the terms hereof.
  - B. Agreement is the result of request for proposal process, RFP # 2783
3. **PROVISIONS:**
  - A. The Purpose of this Provider contract:
    - 1.
    2. Does this Agreement involve Protected Health Information (PHI)? YES ( ) NO ( X )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment) .
    3. The Provider will use state equipment, supplies or facilities.
  - B. The Provider agrees to perform the following services (add an attachment if needed):
    - 1.
  - C. The TOTAL CONTRACT AMOUNT will not exceed \$ \_\_\_\_\_.  
Payment will be in accordance with SDCL 5-26
4. **BILLING:**

Provider agrees to submit a bill for services within (30) days following the month in which services were provided. Provider will prepare and submit a monthly bill for services. Provider agrees to submit a final bill within 30 days of the Agreement end date to receive payment for completed services. If a final bill cannot be submitted in 30 days, then a written request for extension of time and explanation must be provided to the State.

5. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. LICENSING AND STANDARD COMPLIANCE:

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Provider will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. ASSURANCE REQUIREMENTS:

The Provider agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Executive orders 12549 and 12689 (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

8. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

By entering into this Agreement, Provider certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott of divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Provider further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

9. RETENTION AND INSPECTION OF RECORDS:

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Provider.

**10. WORK PRODUCT:**

Provider hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, as defined in the Confidentiality of Information paragraph herein, state data, end user data, Protected Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Provider in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Provider without the written consent of the State.

Paper, reports, forms, software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Provider agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

**11. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Provider breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

**12. FUNDING:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

**13. ASSIGNMENT AND AMENDMENTS:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

**14. CONTROLLING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**15. SUPERCESSION:**

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

16. IT STANDARDS:

Any software or hardware provided under this Agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

17. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. SUBCONTRACTORS:

The Provider may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the Agreement presenting insufficient skills or inappropriate behavior.

The Provider will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Provider is required to assist in this process as needed.

20. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

21. HOLD HARMLESS:

The Provider agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Provider to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

22. INSURANCE:

Before beginning work under this Agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Provider, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Provider agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Provider shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

Provider shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Agreement. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State if during the term of this Agreement either it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

24. CONFLICT OF INTEREST:

Provider agrees to establish safeguards to prohibit employees or other persons from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

25. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Provider by the State. Provider acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Provider shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or providers except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Provider is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Provider shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Provider; (ii) was known to Provider without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider without the benefit or influence of the State's information; (v) becomes known to Provider without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Provider understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Provider acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Provider will be required to undergo investigation.

26. REPORTING PROVISION:

Provider agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Provider, or the State of South Dakota or its officers, agents or employees to liability. Provider shall report any such event to the State immediately upon discovery.

Provider's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Provider's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Provider to report any event to law enforcement or other entities under the requirements of any applicable law.

27. COST REPORTING REQUIREMENTS:

☐ The Provider agrees to submit a cost report in the format required by the State, and is due four months following the end of the Provider's fiscal year.

or

☐ No reporting is required.

28. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
29. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
30. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Provider wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Provider must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

31. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

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Provider Signature

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Date

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Provider Printed Name

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State - DSS Division Director

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Date

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State - DSS Chief Financial Officer Jason Simmons

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Date

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State – DSS Cabinet Secretary Laurie R. Gill

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Date



**State Agency Coding:**

CFDA #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

DSS Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Provider Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Provider Program Email Address \_\_\_\_\_

Provider Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Provider Fiscal Email Address \_\_\_\_\_